

**REMARKS**

In response to the Office Action dated September 27, 2005, Applicants respectfully request reconsideration.

**35 U.S.C. § 112 objection and rejection**

Claim 20 stands objected to and rejected under 35 U.S.C. § 112, first paragraph as failing to comply with the enablement requirement. Claim 20 has been amended to recite a computer program product residing on a computer readable medium that comprises computer-readable instructions. Applicants assert that the specification enables claim 20 in numerous places such as ¶¶ 96 and 101, and FIG. 8 (e.g., lead lines 112, 120, and 126).

**35 U.S.C. § 101 rejection**

Claims 7-12, 19, and 25-31 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

Independent claim 7 has been amended to recite a storage medium communicatively coupled to the processor, the storage medium containing an instruction set. The storage medium recited in claim 7 is a tangible article of manufacture that is within the scope of patentable subject matter described in 35 U.S.C. § 101. As such, claim 7 is patentable. Claims 8-12, which depend from claim 7, are patentable for at least the same reasons discussed with respect to claim 7.

Independent claim 19 has been amended to recite a storage medium communicatively coupled to a processor, the storage medium containing multiple instructions sets. The storage medium recited in claim 19 is a tangible article of manufacture that is within the scope of patentable subject matter described in 35 U.S.C. § 101. As such, claim 19 is patentable.

Independent claim 25 has been amended to recite a memory including information cataloging resources available to a cluster of network appliances. The memory recited in claim 25 is within the scope of patentable subject matter described in 35 U.S.C. § 101. As such, claim 25 is patentable. Claims 26-31, which depend from claim 25 are patentable for at least the same reasons discussed with respect to claim 25.

**35 U.S.C. § 102**

Claims 1, 4-7, 9-13, and 19-31 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,658,595 (Thamattoor).

Thamattoor does not teach, disclose, suggest, or make obvious a method of peer-to-peer review between first and second network-enabled appliances as recited in independent claim 1. The Examiner cited Col. 5, ll. 4-15 as teaching selectively responding to a ping message from the first network-enabled appliance with the second network-enabled appliance. (Office Action dated 9/27/05, p. 4). Column 5, ll. 4-15 of Thamattoor discuss a processing element A that sends “keepalive” inquiries to a processing element B with the processing element B sending a response to each keepalive inquiry from the processing element A. Independent claim 1, however, recites a method of peer-to-peer review between first and second network-enabled appliances including selectively responding to the ping message from the first network-enabled appliance. Furthermore, the Examiner cited Col. 5, ll. 16-48 of Thamattoor as disclosing establishing a periodicity between the sending of subsequent periodic ping messages. (Office action dated 9/27/05, p. 4). Column 5, ll. 16-48 of Thamattoor discuss detecting a failure of one of the processing elements if no transmission is received from the other processing element within a threshold time. The threshold times (e.g.,  $T_M$  and  $T_N$ ) are timeouts used to subsequently determine whether a failure has occurred, rather than being used to determine how often to send a keepalive inquiry. Independent claim 1, however, recites establishing a periodicity between the sending of subsequent ping messages. For at least these reasons, independent claim 1 is patentable over Thamattoor.

For at least the reasons stated above with respect to independent claim 1, dependent claims 4-6, which depend from independent claim 1, are patentable over Thamattoor.

The Examiner asserts that claim 20 has similar limitations as claim 1. For at least the reasons stated above with respect to independent claim 1, claim 20 is patentable over Thamattoor.

The Examiner asserts that claims 7, 9-13, 19, and 21-31 have similar limitations as claims 1 and 4-6. Thus, the Examiner rejected claims 7, 9-13, 19, and 21-31 for the

same reasons set forth in the rejection of claims 1 and 4-6. Applicants respectfully assert that claims 7, 9-13, and 19-31 recite limitations not recited in claims 1 and 4-6. For example, claim 7 does not recite selectively responding to a ping message from a first network-enabled appliance as does claim 1. Claims 13 and 19 do not recite establishing a periodicity between the sending of subsequent periodic ping messages as does claim 1. Unlike claim 1, claims 21 and 25 recite a directory that contains address locations of network appliances and resources associated with each network appliance. Applicants respectfully request the Examiner to identify with particularity any teaching in Thamattoor that reads on claims 7, 9-13, and 19-31.

### **35 U.S.C. § 103 rejections**

Claims 2, 3, 8, and 14-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Thamattoor in view of U.S. Patent No. 5,822,302 (Scheetz).

Claims 2-3, which depend from independent claim 1, stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Thamattoor in view of Scheetz. The Examiner does not assert that Scheetz makes up for the deficiencies of Thamattoor noted above with respect to independent claim 1 from which dependent claims 2-3 depend. Thus, dependent claims 2-3 are patentable for at least the same reasons discussed above with respect to independent claim 1.

Claim 8, which depends from independent claim 7, stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Thamattoor in view of Scheetz. As noted above, because the Examiner asserts that claim 7 has similar limitations as claim 1, the Examiner rejected independent claim 7 for the same reasons as independent claim 1. As stated above, Applicants assert that independent claim 7 recites limitations not recited in independent claim 1, thus Applicants respectfully request the Examiner to identify with particularity any teaching in Thamattoor in view of Scheetz that reads on claim 8.

Claims 14-18, which depend from independent claim 13, stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Thamattoor in view of Scheetz. As noted above, because the Examiner asserts that claim 13 has similar limitations as claim 1, the Examiner rejected independent claim 13 for the same reasons as independent claim 1. As stated above, Applicants assert that independent claim 13 recites limitations not recited in

independent claim 1, thus Applicants respectfully request the Examiner to identify with particularity any teaching in Thamattoor in view of Scheetz that reads on claims 14-18.

**Claims 32-37**

Claims 32-37 have been added. Applicants assert that no new matter has been introduced by claims 32-37. Applicants assert that claims 32-37 are patentable, and notice to that effect is respectfully requested.

**Conclusion**

Based on the foregoing, this application is believed to be in allowable condition, and a notice to that effect is respectfully requested. If a telephone conversation with Applicants' representative would help expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at (617) 542-6000.

The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account 50-0311, Reference No. 18133-301.

Respectfully submitted,



Shane H. Hunter, Reg. No. 41,858  
Kyle Turley, Reg. No. 57,197  
Attorneys for Applicants  
c/o MINTZ LEVIN  
Tel: 617/ 542-6000  
Fax: 617/ 542-2241  
**Customer No. 30623**

Date: March 22, 2006